

Application No. 09/626,636  
Amendment dated February 23, 2006  
Reply to Office Action of August 24, 2005

### **REMARKS**

Applicant cancelled claim 277 without prejudice or disclaimer of its subject matter, amended claims 176, 248, 278, and 289, and added new claims 332-343 to further define Applicant's claimed invention. New independent claim 332 is dependent claim 286 rewritten into independent form.

In the Office Action, the Examiner allowed claims 207-226, 237, and 238, and objected to claims 190-195, 201, 202, 268-288, 294-300, 316, 317, and 319-330 as being allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicant amended independent claim 176 to include the allowable subject matter of dependent claim 201. Claim 201 depends from independent claim 172. Nonetheless, Applicant respectfully submits that the combination of independent claim 176 with the subject matter of claim 201 renders independent claim 176 allowable.

Applicant amended independent claim 248 to include the allowable subject matter of claim 277. Accordingly, Applicant respectfully submits that independent claim 248 is allowable and that claims 249-276 and 278-288 dependent from independent claim 248, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Applicant rewrote claim 286 into independent form as new claim 332. Accordingly, Applicant submits that independent claim 332 is allowable and that claims 333-343 dependent from independent claim 332, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

The Examiner rejected claims 172-184, 247-267, 289-293, 301-315, 318, and 331 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 4,545,374 to Jacobson ("Jacobson"). Applicant submits that independent claims 176 and 248 are allowable for the reasons set forth above. Independent claim 289, as now amended, recites a hollow guard with a passage, "said guard having openings through said sides,

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said side openings having a central longitudinal axis that intersects a portion of said passage.” Jacobson does not teach or suggest a guard as recited in independent claim 289 of Applicant’s claimed invention. Applicant submits that claim 289 is allowable and that claims 290-293, 301-315, and 318 dependent from independent claim 289, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Applicant respectfully traverses the Examiner’s rejection of independent claim 172. Independent claim 172 recites a hollow tubular guard having a proximal end and a distal end opposite the proximal end, “said distal end of said guard being contoured to the curvature of the adjacent vertebral bodies.” The distal end of the cannula taught by Jacobson is not contoured to the curvature of the adjacent vertebral bodies as recited in independent claim 172 of Applicant’s claimed invention. (See, e.g., Jacobson, Fig. 7). Accordingly, Applicant submits that independent claim 172 is allowable and that claims 173-175, 177-184, 247, and 331 dependent from independent claim 172, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim. Applicant submits that the Examiner’s rejection of claims 172-184, 247-267, 289-293, 301-315, 318, and 331 under 35 U.S.C. § 102(e) as being anticipated by Jacobson has been overcome.

Applicant submits that independent claims 172, 176, 248, 289, and 332 are patentable and that dependent claims 173-175, 177-247, 249-276, 278-288, 290-331, and 333-343 dependent from one of independent claims 172, 176, 248, 289, and 332, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the amendments to the claims and preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any


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fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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